

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 476

Short Title: Clarify Control Subst. Exam Act.

(Public)

Sponsors: Representatives Fussell; and Bowman.

Referred to: Business and Labor.

March 23, 1993

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE CONTROLLED SUBSTANCE EXAMINATION  
REGULATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-231 reads as rewritten:

"§ 95-231. Definitions.

As used in this Article, unless the context clearly requires otherwise:

(1) 'Approved laboratory' means a clinical chemistry laboratory which performs controlled substances testing and which has demonstrated satisfactory performance in the forensic urine drug testing programs of the National Institute on Drug Abuse or the College of American Pathologists for the type of tests and controlled substances being evaluated.

~~(1a)~~ 'Controlled substance' is as defined in G.S. 90-87(5) or a metabolite thereof.

(1b) 'Controlled substance examination' means all actions related to drug testing for the purpose of determining if an examinee has used controlled substances.

(2) 'Examiner' means a person, firm, or corporation, doing business in the State, including State, county, and municipal employers, who is the employer or prospective employer of the examinee and who performs or has performed by another person an approved laboratory a controlled substance examination.

1 (3) 'Examinee' means an individual who is an employee of the examiner or  
2 an applicant for employment with the examiner and who is requested  
3 or required by an examiner to submit to a controlled substance  
4 examination.

5 (4) 'Screening' means initial controlled substance examination performed  
6 for the purpose of determining use of controlled substances by an  
7 examinee."

8 Sec. 2. G.S. 95-232 reads as rewritten:

9 **"§ 95-232. Procedural requirements for the administration of controlled substance**  
10 **examinations.**

11 (a) An examiner who requests or requires an examinee to submit to a controlled  
12 substance examination shall comply with the procedural requirements set forth in this  
13 section.

14 (b) Collection of samples: the collection of samples for examination or screening  
15 shall be performed under reasonable and sanitary conditions. Individual dignity shall be  
16 preserved to the extent practicable. Samples shall be collected in a manner reasonably  
17 calculated to prevent substitution of samples and interference with the collection,  
18 examination, or screening of samples.

19 ~~(c) Approved labs: the examiner shall use only laboratories that have~~  
20 ~~demonstrated satisfactory performance in the proficiency testing programs of the~~  
21 ~~National Institute on Drug Abuse, or the College of American Pathology. An approved~~  
22 ~~lab shall confirm any sample that produces a positive result by a second examination of~~  
23 ~~the sample utilizing gas chromatography with mass spectrometry or an equivalent~~  
24 ~~scientifically accepted method.~~ Approved laboratories: the examiner shall use only  
25 approved laboratories for screening and confirmation of samples.

26 (c1) Confirmation of samples: an approved laboratory shall confirm any sample  
27 that produces a positive result by a second examination of the sample utilizing gas  
28 chromatography with mass spectrometry or an equivalent scientifically accepted  
29 method.

30 (d) Retention of samples: a portion of every sample that produces a confirmed  
31 positive examination result shall be preserved by the laboratory that conducts the  
32 confirmatory examination for a period of at least 90 days from the time the results of the  
33 confirmed positive examination are mailed or otherwise delivered to the ~~examinee's~~  
34 ~~employer.~~ examiner.

35 (e) Chain of custody: the examiner or his agent shall establish procedures  
36 regarding chain of custody for sample collection and examination to ensure proper  
37 record keeping, handling, labeling, and identification of examination samples.

38 (f) Retesting of positive samples: the examinee shall have the right to retest a  
39 confirmed positive sample at the same or another approved laboratory. The examiner,  
40 through the approved laboratory, shall make confirmed positive samples available to the  
41 affected examinee, or a designated agent, during the time which the sample is required  
42 to be retained. The examinee must request release of the sample in writing specifying to  
43 which approved laboratory the sample is to be sent. The examinee incurs all reasonable

1 expenses for chain of custody procedures, shipping, and retesting of positive samples  
2 related to this request."

3 Sec. 3. G.S. 95-234 reads as rewritten:

4 **"§ 95-234. Violation of controlled substance examination regulations; civil penalty.**

5 (a) Any examiner who violates the provisions of this Article shall be subject to a  
6 civil penalty of up to two hundred fifty dollars (\$250.00) per affected examinee with the  
7 maximum not to exceed one thousand dollars (\$1,000) per investigation by the  
8 Commissioner of Labor or his authorized representative. ~~In determining whether or not a~~  
9 ~~violation of this Article has occurred, the Commissioner shall determine whether the examiner~~  
10 ~~responsible for the violation was the one who performed the examination or the one for whom~~  
11 ~~the examination was performed.~~—In determining the amount of the penalty, the  
12 Commissioner shall consider:

13 (1) The appropriateness of the penalty for the size of the business of the  
14 employer charged; and

15 (2) The gravity of the violation.

16 The determination by the Commissioner shall be final, unless within 15 days after  
17 receipt of notice thereof by certified mail, the person charged with the violation takes  
18 exception to the determination, in which event final determination of the penalty shall  
19 be made in an administrative proceeding pursuant to Article 3 of Chapter 150B and  
20 which final determination shall be subject to judicial review in a judicial proceeding  
21 pursuant to Article 4 of Chapter 150B.

22 (b) The amount of the penalty when finally determined may be recovered in a  
23 civil action brought by the Commissioner in the General Court of Justice.

24 (c) Sums collected under this section by the Commissioner shall be paid into the  
25 General Fund.

26 (d) Assessment of penalties under this section shall be subject to a two-year  
27 statute of limitations commencing at the time of the occurrence of the violation.

28 (e) The Commissioner of Labor may adopt, modify, or revoke such rules as are  
29 necessary for carrying out the provisions of this Article. The rules adopted shall  
30 promote individual dignity and privacy while not posing an undue burden on  
31 employers."

32 Sec. 4. This act is effective upon ratification.